and strong effect to accomplish the purpose. Now the only act of omission which can be alleged against the first defendant in the present case is his neglect to lodge a caveat under section 134. I cannot conceive that that omission constitutes conduct of a character, to quote the words of Lord Cairns, L.C. in the *Shropshire Union* Case "which would operate and enure to forfeit and take away the pre-existing equitable title." It is not as though he had parted with the document of title, as was done in the *Abigail* case. He retained possession of it throughout and that being so it remained open to him to register his caveat at any time. In my opinion he has done nothing to forfeit his priority.

There is, it seems to me, another insuperable obstacle to the plaintiff's claim. What he is now asking for is in effect a decree of specific performance. As the representative in interest of Eliathamby he stands in the latter's shoes and can have no better rights than he would have had. Eliathamby could only assign to the plaintiff that to which he himself was entitled under his contract with Gan Inn and in my opinion that could not include a right to sue for specific performance when Gan Inn had deposited the *indicia* of title with the first defendant. As the learned trial Judge observed, specific performance being an equitable remedy, any one seeking a decree for the same must show that he is entitled to it in equity. Gan Inn having parted with the document of title Eliathamby could not possibly have been entitled in equity to any such decree. How then can his assignee be so entitled? The first defendant has through the act of Gan Inn become the owner of valuable rights in this land and it would be contrary to all principle for the Court to order the Official Administrator of the estate of Gan Inn to convey an interest which he has not got and which he cannot convey. As Lord Parker observed when delivering the judgment of the Privy Council in the case of *Howard* v. *Miller*, (1915) A.C. 318, 323, there is no principle by virtue of which land can be taken away from the true owner under colour of specific performance of a contract to which he was not a party and which he did not authorise to be made on his behalf. I agree entirely with the conclusions of the learned trial Judge and would dismiss the appeal with costs the deposit to be paid out to the respondent or his solicitor.

PEDLOW, J.—I have had the privilege of reading in advance the judgment of Whitley, J. and I agree, for the reasons set out by him, that this appeal should be dismissed with costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION.]

AITKEN, J.

November 27, 1936.

WONG CHIN.....Appellant.

v.

PUBLIC PROSECUTOR.....Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 74 of 1936].

The Courts Enactment (Cap. 2) section 69 (c)—Extended criminal jurisdiction of First Class Magistrate.

Although the Courts (Amendment) Enactment, 1936 did not repeal section 69 (c) of the Courts Enactment (Cap. 2) yet by repealing section 57 (ii) it has abolished the extended criminal jurisdiction of First Class Magistrates.

Appellant in person.

I. W. Blelloch, Deputy Public Prosecutor, for the respondent.

AITKEN, J.—In this case the learned Magistrate has inflicted a sentence of 18 months' rigorous imprisonment purporting to act under section 69 (c) of the Courts Enactment.

His argument is as follows:—

> "Section 69(c) of the Courts Enactment empowers a Magistrate whose jurisdiction has been extended under section 57 (ii) to inflict a sentence of up to 24 months' imprisonment. Extended criminal jurisdiction was abolished by section 2 (b) of Enactment 15/36. If section 69 (c) of the Courts Enactment is to have any meaning therefore, the reference must be to the extended civil jurisdiction under section 57 (ii), which has not been abolished. Since therefore my jurisdiction has been extended (vide Gaz. Not. 3507 of 21.8.36), I was of opinion that I was empowered to exercise the extended powers conferred by section 69 (c) of the Courts Enactment and accordingly did so."

I agree that it is difficult to explain why the Federal Council should have left paragraph (c) of section 69 of our Statute Book when it abolished the Resident's power to extend a First Class Magistrate's criminal jurisdiction by the Enactment of the 20th of July, 1936, but I cannot agree that because the learned Magistrate's civil jurisdiction has been extended, he can therefore exercise the criminal powers of this paragraph (c). The whole of section 69 of the Courts Enactment deals exclusively with the powers to be exercised by the Courts of the Federated Malay States, in their criminal jurisdiction. In my opinion, therefore, paragraph (c) of that section refers, and can only refer, to an extended criminal jurisdiction of a First Class Magistrate. If, then, that extended criminal jurisdiction has been abolished—as undoubtedly it has, paragraph (c) is left with nothing to which it can refer and has therefore become

meaningless. To anyone like myself, who has served as an Attorney General and known no respite from the labour of preparing legislation to meet insistent and ever growing demands, it is easy to understand what has happened. I feel reasonably confident that the omission to repeal paragraph (c) of section 69 is due to an oversight, which will be repaired in course of time; but quite apart from that view of the matter I find no difficulty whatever in holding that the abolition of all extended criminal jurisdiction in the case of First Class Magistrates has rendered that paragraph (c) inoperative.

I reduce the sentence in this case to one of 12 months' rigorous imprisonment.

Sentence varied.

[SPECIAL APPELLATE JURISDICTION.]

PEDLOW, J.

December 2, 1936.

[APPEAL FROM REGISTRAR OF TITLES, SELANGOR.]

CHUA TECK NEO ..... **Appellant.**

v.

THE REGISTRAR OF TITLES, SELANGOR ..... **Respondent.**

[SELANGOR CIVIL APPEAL No. 33 of 1936.]

The Land Code (Cap. 138) Schedule XXIV (a)—Form of charge—Provision for chargee to include in the charge moneys expended by him on insurance, repairs and payment of taxes.

On the 24th September, 1936, the Registrar of Titles, Selangor, rejected a charge presented by the appellant, which was in the following form:—

"I, N. K. Valliappa Chettiar son of Nagappa Chettiar of No. 41 Sultan Street, Klang being registered as the proprietor subject to the leases charges or other registered interests stated in the document of title thereto of the whole of the lands held under Selangor Land Grant No. 1603 and Certificates of Titles Nos: 6983, 6984, 9004, 10649, 10650, 10651 and 10652 for Lot No. 4 of Section 36; Lots Nos: 20 and 21 of Section 38; Lots Nos: 2 and 3 of Section 36 and Lots Nos: 17, 18 and 19 of Section 38 in the Town of Kuala Lumpur in the district of Kuala Lumpur in total area 0 acres 0 roods 56.03 poles in consideration of the sum of $30,000/- (Dollars Thirty Thousand) only lent to me by Chua Teck Neo (f) Circular Road, Kuala Lumpur (hereinafter called "the said chargee") the receipt of which sum I hereby acknowledge do hereby agree.

Firstly that I will pay to her the said chargee at Kuala Lumpur the above sum of $30,000/- on the 10th day of September 1937.

Secondly that until final repayment of the principal sum I will pay interest on the said sum at the rate of $9/- by the hundred dollars in the year by equal payments of $225/- on the 10th day of every month the first of such payments to be made on the 10th day of October 1936.

Thirdly that if any default be made in payment of the interest aforesaid on the due date, then the principal sum together with accrued interest shall immediately become due and payable on demand by the said chargee.

Fourthly that the said chargee shall have the custody or possession of the issue copies of the said Selangor Land Grant No. 1603 and Certificates of Titles Nos: 6983, 6984, 9004, 10649, 10650, 10651 and 10652 in respect of the said lands.

Fifthly that I will not transfer, sell, charge or otherwise deal with the said lands without the written consent of the said chargee first had and obtained.

Sixthly that I will insure and keep insured the buildings bearing Nos: 105, 107, 109, 111, 124, 126, 128, 130 and 132 Batu Road, Kuala Lumpur, erected on the said lands against loss or damage by fire in the sum of $42,000/- at least in the name of the said chargee with such Insurance Company or Companies as may be appointed by the said chargee and will lodge the policy or policies with the said chargee and if default be made herein it shall be lawful for but not obligatory upon the said chargee to insure the same and all moneys expended by the said chargee together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to the other moneys hereby secured.

Seventhly that I will keep the said buildings now standing or that may hereafter be erected on the said lands in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon the said chargee to carry out such repairs and all moneys expended by the said chargee for such purpose together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to other moneys hereby secured.

Eighthly that I will during the term of this security pay the quit rent, assessment rates and taxes payable from time to time in respect of the said lands as and when the same shall become due and payable. In default whereof it shall be lawful for but not obligatory upon the said chargee to pay the same or any part thereof and all moneys expended by the said chargee together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to the other moneys hereby secured.

Ninthly that I will continue to pay interest at the rate aforesaid until the said sum of $30,000/- and other moneys secured by this Charge are fully repaid:

and for the better securing to the said chargee the repayment in manner aforesaid of the principal sum and interest I hereby charge the lands above described with such principal sum and interest and subject to the aforesaid the said chargee shall be entitled to all the powers and remedies given to a chargee by the Land Code (Cap. 138)."

The grounds of the Registrar of Titles, for rejecting this charge were as follows:—

"This is a Memorandum of Charge by N. K. Valliappa Chettiar son of Nagappa Chettiar in favour of Chua Teck Neo (f) for securing the repayment of the principal sum of $30,000/- and interest. The concluding part of the charge reads

"and for the better securing to the said Chargee the repayment in manner aforesaid of the principal sum and interest I hereby charge the lands above described with such principal sum and interest and subject to the aforesaid the said chargee